**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MAC No. 1143 of 2014**

1. Future Generali India Insurance Company Limited, shop no. 3, 2nd Floor, Maruti Business Park Near Dhuppad Petrol Pump, Police Station Azad Chowk, Civil & Revenue Dist.- Raipur (C.G.)

(Insurer of Veh. No. CG 05 A 2205, 2206)

**---- Appellant**

**Versus**

1. Ghanshyam Nishad S/o Ramsai Nishad, aged about 34 years, profession Rajmistri

2. Smt. Buglibai W/o Ghanshyam Nishad aged about 32 years.

Both R/o Vill. Bhathapara, (Tumgaon), P.S. Tumgoan, Tahsil and Dist. Mahasamund, Civil and Revenue Dist.- mahasamund (C.G.) {Claimants}.

3. Teekaram Dhru S/o Sukhiram Dhru aged about 30 years, Profession Drive5r, R/o Vill. Bakbudawa, P.S. Bhathapara, Dist. Raipur Civil and Revenue Dist. Raipur. (C.G.) (Driver of Veh. No. CG 05 A 2205, 2206)

4. Jaspal Singh S/o Sahen Singh, R/o Vill. Angoli, Sohan Singh, Lal Bagicha, Dhamtari PS Dhamtari Civil and Revenue Dist. Dhamtari. (C.G.) (Owner of Veh. No. CG05 A 2205, 2206).

**---- Respondents**

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| For Appellant | : | Shri Rohitashva Singh, Advocate |
| For Respondent No. 1 & 2 | : | Shri R.V. Rajwade, Advocate. |

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**Hon'ble Shri Justice Gautam Chourdiya**
**Judgment on Board**

**28.11.2018**

1. This is insurer's appeal filed under section 173 of the Motor Vehicles Act, 1988 (henceforth “MV Act, 1988”) against the award dated

27.09.2014 passed by Chief Motor Accidents Claims Tribunal, Raipur C.G. (for short 'the Claims Tribunal') in claim case No. 98 of 2011, exonerating the Insurance Company from its liability to pay compensation to the claimants, directing the appellant/Future General India Insurance Company Limited to first pay the award amount to the claimants and then to recover it from driver and owner of the offending vehicle.

2. Facts of the case, as per claim petition filed under Section 166 & 140 of the MV Act, 1988, on 23.11.2010 respondent No.1 was riding a motor cycle and his child Shyamsunder, aged about 8 years, was also traveling along with him in the said motorcycle and going to his home from village Parsada, when he reached near Shwet Ganga School, respondent No. 3 -driver of the offending vehicle Tractor, Trolly bearing registration No. C.G./A/2205, 2206 while driving the said vehicle rashly & negligently, dashed the motor cycle causing Shyamshunder fell down from it and sustained multiple injuries and died on the spot whereas respondent No.1 sustained grievous injuries due to the said accident.

3. The Tribunal, on a close scrutiny of evidence led, material placed and submissions made by the parties awarded an amount of compensation of Rs. 4,95,000/- along with interest @ 9 percent per annum if amount is paid within one month and in default @ 12 percent per annum from the date of filing of claim petitioner till its actual payment; further directed the appellant/ Insurance Company Limited to first pay the award amount to the claimants and then to recover it from driver and owner of the offending vehicle.

4. Being aggrieved & dissatisfied with the aforesaid award, the instant appeal has been preferred by the appellant/Insurance Company.

5. Learned counsel for the appellant/Insurance Company submits that learned Claims Tribunal has fallen in error in directing the appellant/Insurance Company to first pay the award amount to the claimant and then to recover it from the driver & owner of the offending vehicle as claims Tribunal has already exonerated the Insurance Company to pay compensation to the claimant. He also submits that amount of compensation awarded by the Tribunal to the claimants/parents is also on the higher side as claimants/parents of the deceased are not dependent upon the deceased and, therefore, the same deserves to be reduced suitably.

6. Also heard on cross-appeal filed by the respondents No. 1 & 2/claimants under Order 41 Rule 22 of the Code of Civil of Procedure seeking enhancement of amount under award.

7. Shri R.V. Rajwade, counsel for the respondents No. 1 & 2/claimants while filing the cross-appeal under Order 41 Rule 22 of the CPC submits that the Claims Tribunal has assessed the notional income of deceased as Rs. 3,000/- per months, which appears to be on lower side as on the date of accident i.e. 23.11.2010, notional income is to be considered Rs. 4,500/- per months and looking to fact that deceased was a brilliant student of his school and there is every chance to get the good job after attaining the age of majority and to maintain his family members in lifetime, his notional income could not be considered below the amount of Rs. 4,500/-. He also submits that Claims Tribunal has also committed an error of law in deducting ½ in place of 1/3rd income of the deceased

towards his personal expenses.

8. Heard both the parties and perused the record of the Tribunal and impugned award.

9. The Supreme Court in the matter of **Manuara Khatun and others Vs. Rajesh Kumar Singh and others** reported in **(2017) 4 SCC 796** has already decided the afore-stated legal position holding that if any breach of policy was made by the owner, in these circumstances the duty of insurer to satisfy the award in case of pay and recover order was made against the Insurance Company.

10. Thus, in view of law laid down by the Supreme Court the afore-cited case and looking to the evidence adduced by both the parties before the Tribunal regarding the third party i.e. insurer is duty bound to pay first and recover from the owner, I do not find any substance in the contention so raised by the appellant/Insurance Company and the learned Tribunal has rightly directed the appellant/Insurance Company to first pay the award amount to the claimants and then to recover it from the driver & owner by the offending vehicle.

11. For the reasons mentioned hereinabove, appeal filed by the appellant/Insurance Company against the award impugned is liable to be and is hereby dismissed.

12. Quantum of compensation is also challenged by the appellant/Insurance Company on the ground that the claimants are not dependent upon the deceased. In my opinion, there is no substance in this submission made by the counsel for the Insurance Company as

mother & father both are alive and, therefore, they can be treated as dependents/legal representatives of the deceased.

13. The Hon'ble Supreme Court in the matter of ***Kishan Gopal and another Vs. Lala and others***, ***(2014) 1 SCC 244***, wherein a child aged about 10 years died in motor vehicular accident and the claimants were young parents, considering its various earlier decisions awarded Rs.4.50 lacs towards total loss of dependency.

14. This Court in similar matter i.e. ***Smt. Safaribai Suryavansi and another Vs. Ajay Ku. Patel and others, 2015(2) CGLJ 399***, relying upon the aforesaid decision in ***Kishan Gopal(supra)*,** has also granted Rs.4.50 lacs towards total loss of dependency. In the instant case, looking to the age of the deceased(child) and time of accident i.e. in the year of 2013, Rs. 4,50 lacs can be considered loss of dependency in place of Rs. 2,70,000/- as awarded by the Tribunal.

15. In **Magma General Insurance Co. Ltd. Vs. Nanuram @ Chuhru Ram & Ors. In civil appeal No. 9581 of 2018 arising out of SLP[Civil] No. 3192 of 2018** the Hon'ble Supreme Court has granted amount towards loss of filial consortium, apart from awarding towards other conventional heads, which, in the facts & circumstances of the case, is applicable to present case and in my considered opinion, Rs. 2,00000/- should be added as filial head. Further, in view of decision of the Hon'ble Supreme Court the matter of ***National Insurance Co. Ltd. Vs. Pranay Sethi, (2017) 16 SCC 680***, Rs.30,000/- towards conventional heads is to be granted in the case like the present one.

16. So far as cross appeal filed by the respondents No. 1 & 2/claimants seeking enhancement of the awarded amount is concerned, at the time of accident the deceased was aged about 8 years and he was studying in class 3rd, thus, in view of the aforesaid decisions, this Court is of the opinion that the appellants/claimants are entitled for a sum of Rs.4.50 lacs towards loss of dependency in place of Rs. 2,70,000/- as awarded by the Tribunal. Claimants are further entitled for Rs. 30,000 towards funeral expenses & loss of estate Rs.2,00,000/- towards filial and thus awarded a total sum of Rs.6,75 000/-

17. Since the Tribunal has already awarded Rs.4,95,000/-, after deducting the same, the claimants are held entitled for additional compensation of Rs.1,85,000/- lacs with interest @ 9% per annum from the date of application till realization. However, rest of the conditions of the impugned award shall remain intact.

18. In the result, the appeal filed by the Insurance Company being without substance is hereby dismissed and the cross-appeal filed by the respondent No. 1 & 2/claimants is allowed in part without modification in the impugned award to the above extent.

Sd/-

(Gautam Chourdiya)
Judge

Amita